UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK CITY AND VICINITY DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

Plaintiff,

-against-

THE ASSOCIATION OF WALL-CEILING & CARPENTRY INDUSTRIES OF NEW YORK, INC.,

Defendant.

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DECISION & ORDER

14 Civ. 6091

I. Background

Having reviewed the record herein, including, without limitation, (i) the Consent Decree, dated March 4, 1994, between the United States of America ("Government") and District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America ("District Council" or "DCC" or "Union"), et al., 90 Civ. 5722 (S.D.N.Y. March 4, 1994) ("Consent Decree"), placing District Council under judicial oversight (initially under District Judge Charles S. Haight) to ensure that the District Council and its constituent local unions were run democratically and free of unlawful influence (i.e., labor racketeering).[1] (See Consent Decree at 1-2.) The Consent Decree provided, among other things, for court supervision and the appointment of an independent Investigations and Review Officer, as well as specific rules and procedures concerning the hiring of carpenters on jobs in New York City and vicinity. (See id. at 4-5.); (ii) the April 18, 2007 Amended Summary Order of the United States Court of Appeals for the Second Circuit, finding that the District Council had violated the

[1]This matter was reassigned to this Court on July 1, 2010.

Consent Decree by failing to notify the Government (or Judge Haight) before agreeing to collective bargaining agreements that were in conflict with the Consent Decree's "Job Referral Rules" and directing the district court to enter an order of contempt against the District Council. See United States v. Dist. Council of N.Y.C. and Vicinity of the United Bhd. Of Carpenters and Joiners of America, et al, 229 F. App'x 14 (2d Cir. 2007); (iii) Judge Haight's Final Order and Judgment of Contempt and Remedy, dated May 26, 2009, U.S. v. Dist. Council, 90 Civ. 5722 (S.D.N.Y. May 26, 2009) ("Final Contempt Order"); (iv) the precedent setting Collective Bargaining Agreement, dated March 12, 2013 ("CBA"), between the Association of Wall-Ceiling & Carpentry Industries of New York ("WCC" or "WC&C" or "Employer") and District Council, which was approved by this Court on May 8, 2013; (v) the Decision & Order dated May 8, 2013, U.S. v. Dist. Council, 90 Civ. 5722 (S.D.N.Y. May 8, 2013), ("Decision & Order")[2] which, among other things, **specifically limits the full mobility staffing of so-called "two man jobs"**;[3] (vi) the Arbitration Award, dated July 22, 2014, issued by Arbitrator Howard C. Edelman, in which the Arbitrator stated: "That dispute [before him between District Council and WCC over the two man job provisions in the CBA] **might well result in a favorable finding for the DCC [Union] under the principle that clear language trumps a practice to the contrary**." ("Arbitration Award") (emphasis added.) Despite his "clear language" remarks,

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[2]The Decision & Order states: "Accordingly, it is ordered that the Court's May 26, 2009 Order (Haight, J.) is hereby modified and superseded to permit the parties forthwith to implement the full mobility job hiring and compliance procedures specified in the CBA between the District Council and the WC&C approved on April 25, 2013." (Decision & Order, at 11.)

[3]Article VI, Section 2(b) of the CBA provides in part as follows: "For jobs only requiring two (2) employees, the Employer will be permitted to work without a certified shop steward without a time limitation. Any employee who is not a member of the District Council will be matched 1:1 from the District Council's Job referral List. The Union will assign one (1) of the two (2) members with the duties of the shop steward." (CBA at 17-18.)

the Arbitrator, nevertheless, ruled in favor of the Employer after also considering "past industry practice" and a separate and distinct agreement between the Employer and the United Brotherhood of Carpenters and Joiners which was not in effect at the time the CBA was approved and did not become effective until July 1, 2013 (i.e., the International Agreement);[4] (iv) the Complaint, dated August 4, 2014, filed by District Council against WCC seeking to vacate the Arbitration Award; (vii) the summary judgment motion filed by WCC, dated September 8, 2014, arguing that the "WCC did not negotiate away its members' rights to invoke International Agreements during the negotiations for a new CBA" (Def.'s Mem of Law in Supp. of Its Mot. for Summ. J., dated Sept. 8, 2014, at 5); (viii) the cross summary judgment motion filed by District Council, dated September 22, 2014, arguing (persuasively) that the Arbitration Award ignores "the plain terms" of the CBA (Pl.'s Mem. of Law in Supp. of Its Mot. for Summ. J., dated Sept. 22, 2014, at 10); (ix) the International Agreement; and (x) the record before the Arbitrator.

And, having heard helpful oral argument in this matter on March 30, 2015, **the Court is constrained to vacate the Arbitration Award, to deny summary judgment to WCC, and to grant the summary judgment motion of the District Council, as follows:**[5]

II. Standard of Review

"An award issued pursuant to a collective bargaining agreement will be set aside only if

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[4]Arbitrator Edelman acknowledged: "Prior to May 2013, the Association of the Wall-Ceiling Industry had an international agreement with the UBC. When that agreement expired, the WCC and the UBC negotiated their own international agreement. It was executed on July 1, 2013." (Arbitration Award at 3.)

[5]**Any issues raised by the parties not specifically addressed herein were considered by the Court on the merits and rejected, including the Order to Show Cause filed by WCC on August 19, 2014.**

the very essence of the award violates the parties' agreement . . . or if the award unequivocally violates a well-established public policy." 1199 SEIU United Healthcare Workers East v. Lily Pond Nursing Home, No. 07 Civ. 408, 2008 WL 4443945, at *5 (S.D.N.Y. Sept. 29, 2008) (internal citations omitted).

"When provisions in the agreement are unambiguous, they must be given effect as written . . . Only when provisions are ambiguous may courts look to extrinsic factors–such as bargaining history, past practices, and other provisions in the CBA–to interpret the language in question." Aeronautical Indus. Dist. Lodge 91 of Int'l Ass'n Of Machinists and Aerospace Workers v. United Techs. Corp., 230 F.3d 569, 576 (2d Cir. 2000) (internal citations omitted).

"It is beyond question that obedience to judicial orders is an important public policy." W.R. Grace and Co. v. Local Union 759, et al., 461 U.S. 757, 766 (1983).

III. Analysis

The Arbitration Proceeding

The Arbitration was commenced by WCC's filing of a grievance against District Council in the early part of 2014.[6] The Arbitrator summarized the nature of the parties' dispute as follows: "In June 2011, the local [collective bargaining] agreement between the WCC and the DCC expired. Negotiations between these parties culminated in a Memorandum of Understanding which was executed in August 2012. [Memorandum of Understanding ("MOU"), dated Aug. 22, 2012, U.S. v. Dist. Council, 90 Civ. 5722, ECF No. 1223.] Two changes in the new MOU from the expired Collective Bargaining Agreement deserve mention. One involved a "full mobility" provision which allowed contractors to hire carpenters of their choosing and not

[6]During a conference held on March 14, 2014, Mr. Murphy informed the Court that the two man job issue was in arbitration.

only those from an Out of Work list. A second modification related to two-man jobs. In the new Collective Bargaining Agreement, the DCC supplies two local Carpenters and designates one of the two to perform Shop Steward duties; i.e. electronic reporting of hours." (Arbitration Award at 3.)

When, according to the Arbitrator, the parties could not stipulate to the issue to be arbitrated, the Arbitrator determined that "the issue to be decided is: Does the International Agreement supersede the [parties'] Collective Agreement with respect to the issue of two-man jobs?" (Arbitration Award at 4.) Following a hearing and the submission of briefs, letters, and a telephone call among the Arbitrator and counsel, the Arbitrator resolved this issue in favor of WCC. He found that it was incumbent upon the parties to "indicate in explicit terms, if they were changing this [past] practice. They did not, the record reveals." (Arbitration Award at 17.) "I conclude that the WCC has the right to invoke the International Agreement with respect to the issue of two-man jobs." (Arbitration Award at 22.)

Arbitrator Edelman then added the following curious characterizations of his ruling: "I have made no ruling, neither express nor implied, what the International Agreement means as it applies to two-man jobs." (Arbitration Award at 21.) And, he stated, "Finally, I make no ruling as to the blanket right of the WCC to invoke the International Agreement at its sole discretion." (Arbitration Award at 21.)[7]

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[7]In discussing the parties' intention with respect to two man jobs, the Arbitrator stated: "The WCC acknowledges DCC's reliance on statements made by John DeLollis, its Executive Director, to its delegates on July 25, 2012." [On that occasion, Mr. DeLollis stated that the two man provision in the MOU "keeps New York City carpenters working the two-man. An out-of-towner can't work that two-man job. It's got to be a New York City District Council Carpenter." (Arbitration Award at 18) (quoting Exhibit A attached to the Union's pre-hearing brief.)]

The Arbitrator continued: "It [WCC] asks me go give no weight to these remarks, observing that no vote was taken that night. Moreover, Claimant urges, DeLollis' comments

The Arbitrator also found that: "No document reflects such a modification. The deal memo does not contain any language in this regard. **Nor does the agreed upon Collective Bargaining Agreement between WCC and the DCC**. No letter between counsel reflects an intent to preclude the WCC from invoking the International Agreement. Thus, I find, there was no agreement by the WCC to cede its right to do so." (Arbitration Award at 14) (emphasis added.) He quoted the testimony of Michael Bilello during the arbitration proceeding as follows: Question by Counsel: "As the EST and the chief negotiator for the District Council, it was your understanding that this two-man language would eliminate the need, and actually eliminate the possibility, of two-man International Agreements being used in the New York City District Council jurisdiction with Wall-Ceiling?" Michael Bilello: "Absolutely." (Arbitration Award at 17) (quoting Arbitration Hearing Transcript, dated Apr. 17, 2014 ("Arbitration Hr'g Tr.") at 133-34.)

The Very Essence of the Arbitration Award Violates the Parties' Collective Bargaining Agreement

The 2013 District Council-Wall Ceiling Collective Bargaining Agreement (CBA) was a "game changing" departure from prior collective bargaining agreements. Its central significance is to allow the Employer much greater flexibility to select workers on most jobs. See, e.g., CBA, Article VI, Section 2, at 16-17 ("The first Carpenter on the jobsite shall be the Foreman and may be selected by the Employer. The second Carpenter shall be the Shop Steward referred by the

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reflect only that the two man provisions in the proposed CBA would 'likely eliminate the 'need' for contractors to invoke the International Agreement.' . . . He never said it eliminated WCC's right to do so, Claimant submits. Indeed, it suggests, former [DCC] Official Michael Bilello conceded as much." (Arbitration Award at 8).

Union. The remainder of the Carpenters shall be selected by the Employer. Any employees not members of the District Council shall be matched 1:1 from the District Council Job Referral List.") It does this by substituting "full mobility" in place of the hiring ratios approved on May 26, 2009 (and in 1994), by Judge Haight, in exchange for wage increases for workers and the implementation of electronic anti-corruption measures. (See Decision & Order.) The CBA and the Memorandum of Understanding upon which it is based were extensively negotiated by union and employer representatives and, thereafter, approved by vote of the rank and file. **The two man job provision in the CBA is a bargained-for clear and unequivocal limitation to full mobility and mirrors the two man job provisions in the Memorandum of Understanding reached by the parties on August 22, 2012.**[8]

There were, as noted, extensive written and oral presentations concerning the CBA and two man job staffing submitted to this Court prior to the Decision & Order. The parties' attorneys, James Murphy for District Council, and Mark A. Rosen for WCC, appear to have been intimately involved in all phases of the CBA and the negotiation of all CBA provisions.[9] Both Mr. Murphy and Mr. Rosen appeared in Court to urge its approval. The colloquy on February 27, 2013, prior to this Court's approval of the CBA, included the following:

- The Court: "So this is a contract that will change[] existing procedure, practice, and in

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[8] The MOU, dated August 22, 2012, which was presented to the Arbitrator states, in part: "Two man jobs - For jobs only requiring two employees, the Employer will be permitted to work without a certified shop steward without a time limitation. Any employee who is not a member of the NYCDCC will be matched 1:1 from the NYCDCC Job Referral List. The Union will assign one of the two members with the duties of the shop steward."

[9] It appears that Mr. Rosen was also counsel to WCC in connection with the International Agreement. District Council was **not** a party to the International Agreement and Mr. Murphy was not counsel for either side in the negotiations of the International Agreement.

fact orders of the Court with regard to that. Correct?" (Hr'g Tr., dated Feb. 27, 2013 ("2/27/13 Tr."), at 10:3-5.)

●Mr. Murphy: "Correct." (2/27/13 Tr. at 10:6.) . . . "Plus there are initiatives by the inspector general's office to hire retired carpenters to go out and do spot checks obviously on the big jobs, but **especially on jobs where there won't be shop stewards assigned, one- and two-person jobs, to make sure they're in compliance under the collective bargaining agreement, because that's a new thing under the collective bargaining agreement**, and to make sure there is not other untoward things happening in relationship to the hiring and how people are being paid and how hours are being recorded." (2/27/13 Tr. at 11:17-25) (emphasis added.) . . .

●Mr. Murphy: "The district [council's] position is that all of the provisions to which the parties negotiated and agreed to are incorporated into the new collective bargaining agreement . . . . " (2/27/13 Tr. at 41:12-15.) . . .

●The Court: "[U]sually what lawyers do in a collective bargaining agreement, they put in the provisions that they think govern . . ." (2/27/13 Tr. at 48:15-17.)

●Mr. Rosen: "**And we have done that.**" (2/27/13 Tr. at 48:19.) (emphasis added.)[10]

There was no basis for the Arbitration Award to depart from the two man jobs provision of the CBA, as it did. And, there were very good reasons for it not to. For one thing, the CBA

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[10]See also Hr'g Tr., dated Mar. 30, 2015 ("3/30/15 Tr.") at 8:16-23 (The Court: "So correct me if I'm wrong, I think you said this to me: The order submitted says the mobility provisions and compliance provisions as reflected in the draft are approved–this is when you both came here with a draft–and, again, it's our understanding that that is what needs to be approved by the Court. Is that not you or is that another Mr. Rosen?" Mr. Rosen: "That would be me, your Honor."); and at 12:2-5 (Mr. Rosen: "**It may be hindsight to saying, [n]ow, when we agreed to this two-man job agreement in the collective bargaining agreement, we should have included to make some reference to the international [Agreement]**. . . .".) (emphasis added.)

terms regarding two man jobs are crystal clear and unambiguous. On a two man job, a non-District Council member must be matched 1:1 with a District Council member from the job referral list. (See CBA, Article VI, Section 2, at 16-17.) It's that simple. The Arbitrator correctly observed that the "dispute might well result in a favorable finding for the DCC under the principle that clear language trumps a practice to the contrary." (Arbitration Award at 20.) He should have stopped there. See Detroit Coil Co. v. Int'l Ass'n of Machinists & Aerospace Workers, Lodge No. 82, 594 F.2d 575, 581 (6th Cir. 1979), cert denied, 444 U.S. 840 (1979) ("In view of the clear and unambiguous language of . . . the collective bargaining agreement, and since the record contains no evidence indicating a departure by the parties from the clear intendment of that language, we conclude that the arbitrator's award cannot be deduced rationally from the Agreement, nor does the award draw its essence from the Agreement.").

Second, there is no reason to believe that the CBA does not reflect the parties' agreement as to two-man jobs. As noted, in response to the Court's observation that "[U]sually what lawyers do in a collective bargaining agreement, they put in the provisions that they think govern[] the collective bargaining agreement in the agreement," Mr. Rosen, for WCC, stated: "**And we have done that**." (2/27/13 Tr. at 48:15-19.) (emphasis added.)[11]

Third, the District Council is neither a signatory nor a party to the International Agreement. The International Agreement did not (even) become effective until eleven months after the MOU and four months after the CBA were signed–and two months after the CBA was approved by this Court. (See Arbitration Award at 3) ("Prior to May 2013, the Association of

[11]Mr. Murphy, as noted, also stated: "The district [council's] position is that all of the provisions to which the parties negotiated and agreed to are incorporated into the new collective bargaining agreement . . . ." (2/27/13 Tr. at 41:12-15.)

the Wall-Ceiling Industry ("AWCI") had an international agreement with the UBC. When that agreement expired, the WCC and the UBC negotiated their own international agreement. It was executed on July 1, 2013. In June 2011, the local agreement between the WCC and the DCC expired. Negotiations between these parties culminated in a Memorandum of Understanding ("MOU") which was executed in August 2012."); see also 3/30/15 Tr. at 19:5-8 (Mr. Rosen: "Then your Honor approved the current CBA I believe in May of 2013. I think somewhere in there an existing agreement [i.e. an international agreement] expired, and then a successor [International Agreement] was negotiated [in] June or July of 2013.)) And, DCC officials were not present at negotiations of the International Agreement. (See Arbitration Award at 7) ("[T]he WCC points out that DCC officials were not present at negotiations for the International Agreement.")

Fourth, the Arbitrator's rejection of the two man job provisions of the CBA might have the unintended consequence of voiding the entire CBA.[12] Article XV of the CBA provides that: "if at any time during the term of this Agreement the United States District Court for the Southern District of New York voids the provisions of Article VI, Section 2 and Article VII, Section 6 (i.e., the so called full mobility hiring provisions), this Agreement shall become a nullity and the parties shall return to the terms and conditions under their collective bargaining

[12]The following colloquy occurred between the Court and Mr. Rosen, counsel for WCC, at a hearing on March 30, 2015: The Court: "You think there's no conflict between the two-man crew provisions of the two agreements? You think they say the same thing?" Mr. Rosen: "The only difference, the only difference is the fact that under the International [Agreement] you could have two out-of-towners, whereas under the collective bargaining agreement, they both have to be the District Council." (3/30/15 Tr. at 13:4-10.) According to James Murphy, District Council's counsel, "[u]nder the International Agreement, the contractor would be allowed to put on the job two people who are not members of the New York City District Council. That's the big difference . . . ." (3/30/15 Tr. at 4:15-18.)

agreement that expired by its terms on June 30, 2011." (CBA, Article XV, at 38-39.)[13] This problem under the CBA would result from a court order affirming the Arbitration Award.

Fifth, assuming arguendo, that the International Agreement were relevant to the discussion, much less controlling (as the Arbitrator then determined), one would still conclude that the CBA's two man job provisions take precedence over the International Agreement's two man job provision– not vice versa.[14] That is, pursuant to Article I, Section 1.3 of the International Agreement, "If any provisions of this Agreement or the application of such provisions to any person or circumstances, shall be in conflict with provisions contained in the applicable Local Union or Council agreement, the provisions of this Agreement shall supersede those contained in the Local Union or Council agreements, **unless prohibited by law or court order**." (International Agreement, Article I, Section 1.3, at 3) (emphasis added.) The Court's May 8, 2013 Decision & Order is unquestionably such a "court order."

For the above reasons, the Arbitration Award (clearly) does not draw its essence from the

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[13]See also 3/30/15 Tr. at 28:20-24 (The Court: "In other words, here [by invoking the International Agreement] you'd be attacking part of the full mobility regime, is the way I interpret it. Am I wrong?" Mr. Murphy: "I think that that's a valid interpretation, your Honor. . . .").

[14]Article V, Section 5.3 of the International Agreement states in part: "Signatory Employers shall be permitted to bring in two (2) key traveling employees from its home area to perform required work in any jurisdiction or geographical area of the International Union without the necessity of securing work permits. However, the Signatory Employer must, before starting work, advise the Local Union and/or Council in the area where the work is to be performed of their presence and the project's intended duration." (International Agreement, Article V, Section 5.3, at 8.)

Article V, Section 5.6 of the International Agreement further states, in part: "The designated representatives of the Local Union or Council having jurisdiction in the area where the project is located may appoint one working steward per shift from the employees on the job to act as a representative of the Local Union or Council . . . ." (Id. at Article V, Section 5.3, at 9.) These provisions differ from the CBA in that there is no 1:1 matching and a steward is required in the International Agreement.

parties agreement as set forth in the Collective Bargaining Agreement between WCC and DCC.

The Arbitration Award Violates this Court's Decision & Order dated May 8, 2013 (as well as Subsequent Orders of the Court)

As has been already noted, the Court's May 8, 2013 Decision & Order approved the CBA and authorized significant and well-publicized changes to Judge Haight's May 26, 2009 Order. In that Order, Judge Haight ruled that: "The percentage of the total carpenter workforce on a job site selected by a contractor shall not exceed 67% . . . The remaining 33% of the total carpenter workforce on a job site will be carpenters assigned by the District Council from the Out of Work List . . . . " (Final Contempt Order, at 4.)[15] The Decision & Order, as noted, followed extensive written and oral submissions to the Court by the parties, including the assurances of WCC's counsel, Mr. Rosen, that "**The order submitted [approving the CBA] says the mobility provisions and compliance provisions as reflected in the draft are approved. And again, it's our understanding that that is what needs to be approved by the Court.**" (2/27/13 Tr. at 42:23-25-43:1) (emphasis added.)

Several subsequent orders were also issued by the Court approving other collective bargaining agreements. The subsequent collective bargaining agreements **all** contained the same full mobility and two man job language found in the CBA. (See, e.g., Order Approving Building Contractor Association CBA, dated June 11, 2013, U.S. v. Dist. Council, 90 Civ. 5722 (S.D.N.Y.

[15]Prior to Judge Haight's Final Contempt Order, there had been a 50:50 staffing ratio. See United States v. Dist. Council of N.Y.C. and Vicinity of the United Bhd. Of Carpenters and Joiners of America, et al, 229 F. App'x 14, 16 (2d Cir. 2007) ("When the Consent Decree was entered, all of the Union's CBAs contained a '50/50 rule' that authorized the union to assign fifty percent of the carpenter workforce at a job site (with the company designating the other fifty percent [from the District Council's job referral (out of work) list]." (internal quotation marks and citation omitted).

June 11, 2013), ECF No. 1332; Order Approving Contractor Association of Greater New York CBA, dated Sept. 12, 2013 id., (S.D.N.Y. Sept. 12, 2013), ECF No. 1394; and Order Approving Cement League CBA, dated Oct. 23, 2013, id., (S.D.N.Y. Oct. 23, 2013), ECF No. 1426.) These orders (alone and together) reflected a fundamental shift in the hiring practices and compliance mechanisms of District Council and its various employer associations which are the very core (essence) of each of the collective bargaining agreements.[16]

During the hearing held by this Court on February 27, 2013, the following comments were made by Mr. Murphy, counsel for DCC, and Mr. Rosen, counsel for WCC, respectively:

•Mr. Murphy: "When a deal was reached on August 22nd of 2012 with Wall Ceiling, that deal [i.e. the MOU], along with compliance piece of it . . . was ratified by the [local] [U]nion's [E]xecutive [C]ommittee, and that same night, August 22nd, 2012, was ratified by the delegate body. And it provides (for the first time) full mobility, but it also provides for what we think is a multifaceted compliance program that the [D]istrict [C]ouncil, in conjunction with its own inspector general, in conjunction with the [United States] government, in conjunction with the [then-Court Appointed] Review Officer [Dennis] Walsh, have been put into place." (2/27/13 Tr. at 9:5-14.)

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[16]See 3/30/15 Tr. at 29:15-21 (Mr. Rosen: "So the two-man job is just one portion of that." The Court: "But it is clearly a part of the full mobility regime, so to speak–let's call it that –that was changed fairly dramatically in this collective bargaining agreement. When I signed the order, that's what I understood." Mr. Rosen: "No doubt.") . . . The Court: "So bottom line is you're saying they're []covered by this provision of the collective bargaining agreement that you all negotiated, signed and asked me to approve. Is that what you're saying?" Mr. Rosen: "**I'm saying they have the option to invoke this separate agreement [International Agreement] that's been in effect for years, and that was not affected during negotiations." The Court: "And that option is found where in the collective bargaining agreement?" . . . Mr. Rosen: "I've said repeatedly, the collective bargaining agreement does not reference the International Agreement.**" (3/30/15 Tr. at 32:3-11, 23-25.) (emphasis added.)

●Mr. Rosen: "To the extent we have an agreement that varies from the terms of the consent decree, or . . . [the] prior order of Judge Haight, we do need judicial approval . . . ." (2/27/13 Tr. at 40:14-17.).

The Arbitration Award is squarely contrary to each of these Court orders, including the Court's Decision & Order, of May 8, 2013, which confirm the unambiguous, bargained-for Collective Bargaining Agreement's two man job provisions reached between District Council and WCC.[17] The Court is, therefore, constrained to conclude that the Arbitration Award is in violation of public policy because it contradicts this Court's Decision & Order. See 470 Stratford Holding Co. v. Local 32B-32J, Serv. Emps. Int'l Union, 805 F. Supp. 118, 123 (E.D.N.Y. Oct. 27, 1992) ("[A] court always retains the residual power to refuse to enforce an arbitrator's award if it is wholly contrary to public policy . . . ") (internal quotation marks and citation omitted); Newsday, Inc. v. Long Island Typographical Union, No. 915, CWA, 915 F.2d 840, 841 (2d Cir. 1990); see also International Agreement, Article 1, Section 1.3, discussed *supra* p. 11.

On March 30, 2015, the following colloquy took place: (**Mr. Rosen: "[I]t really doesn't matter if [the Arbitrator is] right or wrong." The Court: "Ah. It matters if he acts contrary to an order, right? He can't do that. So we have an order here. And it also matters if he doesn't reflect the essence of the deal. And we have a deal here**.") (3/30/15 Tr.

[17]See 3/30/15 Tr. at 15:9-14, 19-23 (Mr. Rosen: "The [WCC] association is not subject to the [March 4, 1994] consent decree. It's the District Council. I was in court, and we did agree, and I was here and I acknowledge that under the consent decree, in the parameters that have been established by the judicial oversight, the Court had to approve the Collective Bargaining Agreement." . . . The Court: "I mean, you [i.e. Mr. Rosen] were not a bystander. **You were part and parcel of the request for me to enter an order approving the terms of your agreement, which include this two-man crew term. I mean, there's no other conclusion.**") (emphasis added.)

at 17:1-6.) (emphasis added.)

IV. Conclusion & Order

For the foregoing reasons, the Arbitration Award is vacated; District Council's motion for summary judgment [#18] is granted; WCC's summary judgment motion [#13] is denied. WCC's counterclaims are dismissed as moot. The Clerk is directed to close this case.

Dated: New York, New York
April 27, 2015

RMB

RICHARD M. BERMAN, U.S.D.J.